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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA
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14 UNITED STATES OF AMERICA,) 2:06-cr-00367-HDM
15 Plaintiff,) 2:16-cv-01271-HDM
16 vs.) ORDER
17 ELLIOTT DAUGHERTY,)
18 Defendant.)
19 _____)

20 Defendant has filed a 28 U.S.C. § 2255 motion seeking relief
21 based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). *Johnson*
22 held that the residual clause in the ACCA's definition of "violent
23 felony" is unconstitutionally vague. Defendant was not charged or
24 sentenced under the ACCA. Rather, he was found to be a career
25 offender under U.S.S.G. § 4B1.1. Under § 4B1.1, a defendant
26 qualifies as a career offender if:

27 (1) the defendant was at least eighteen years old at the
28 time the defendant committed the instant offense of

1 conviction; (2) the instant offense of conviction is a
2 felony that is either a crime of violence or a controlled
3 substance offense; and (3) the defendant has at least two
4 prior felony convictions of either a crime of violence or
5 a controlled substance offense.

6 At sentencing, the court determined that defendant qualified as a
7 career offender because he had two prior crimes of violence and his
8 instant offense was a crime of violence. The definition of "crime
9 of violence" for purposes of the career offender guideline includes
10 a residual clause that is identical to that in the ACCA. See
11 U.S.S.G. § 4B1.2(a). Defendant argues that *Johnson* also
12 invalidated this residual clause, that his instant offense could
13 have qualified as a "crime of violence" only under the residual
14 clause, and that he is therefore entitled to relief.

15 Whether *Johnson* applies to the Guidelines, and if so, whether
16 it applies retroactively on collateral review, are threshold issues
17 in this case that have not been answered by either the Ninth
18 Circuit or the Supreme Court. However, the issues are pending
19 before the United States Supreme Court in *Beckles v. United States*,
20 No. 15-8544. *Beckles* presents the following issues:

- 21 1. Whether *Johnson* applies retroactively to collateral cases
22 challenging federal sentences enhanced under the residual
23 clause in U.S.S.G. § 4B1.2(a)(2)?
- 24 2. Whether *Johnson's* constitutional holding applies to the
25 residual clause in U.S.S.G. § 4B1.2(a)(2), thereby
26 rendering challenges to sentences enhanced under it
27 cognizable on collateral review?
- 28 3. Whether mere possession of a sawed-off shotgun, an

1 offense listed as a "crime of violence" only in the
2 commentary to U.S.S.G. § 4B1.2, remains a "crime of
3 violence" after *Johnson*?

4 As *Beckles* will likely decide threshold issues in this case, the
5 government seeks a stay of defendant's petition pending the Supreme
6 Court's decision in that case.

7 "[H]abeas proceedings implicate special considerations that
8 place unique limits on a district court's authority to stay a case
9 in the interests of judicial economy." *Yong v. I.N.S.*, 208 F.3d
10 1116, 1120 (9th Cir. 2000). The Ninth Circuit has "never
11 authorized, in the interests of judicial economy, an indefinite,
12 potentially lengthy stay in a habeas case. . . . although
13 considerations of judicial economy are appropriate, they cannot
14 justify [an] indefinite, and potentially lengthy, stay." *Id.* at
15 1120-21. Thus, in deciding whether to stay this case, the court
16 should consider whether a stay is likely to resolve the case
17 without inordinate delay; whether *Beckles* is likely to conclusively
18 resolve issues in this case; and the potential prejudice to the
19 defendant. See *United States v. Beane*, 2016 WL 4045392, at *2
20 (N.D. Cal. July 28, 2016).

21 The Supreme Court will likely decide *Beckles* by the end of
22 this term. Accordingly, a stay would not be indefinite.

23 Further, *Beckles* is likely to decide whether defendant has any
24 *Johnson* claim at all based on his status as a career offender,
25 including whether that claim can be raised on collateral review.
26 If either of those questions is answered in the negative, defendant
27 will not be entitled to relief based on *Johnson*. In addition, the
28 Supreme Court may decide whether crimes listed solely in the

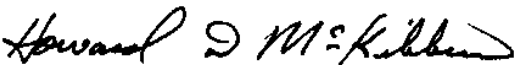
1 commentary of the Guidelines qualify as crimes of violence. The
2 answer to this question may be relevant to defendant's claims,
3 should the court reach the merits of defendant's petition.

4 Finally, defendant has argued that he would be eligible for
5 immediate release if the court were to grant his § 2255 petition.
6 However, on balance, the relatively short duration of a stay and
7 the fact that *Johnson* will decide important threshold - and
8 possibly merits - issues in this case outweighs any prejudice that
9 the defendant might suffer from a temporary stay. Accordingly, the
10 court concludes that under the considerations set forth in *Yong*, a
11 short stay of the defendant's petition in this case is appropriate.

12 In accordance with the foregoing, proceedings on the
13 defendant's § 2255 petition are hereby **STAYED** until April 9, 2016,
14 or until further order of the court. Either party may move to lift
15 the stay at any time on a showing of good cause.

16 IT IS SO ORDERED.

17 DATED: This 8th day of December, 2016.

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19 UNITED STATES DISTRICT JUDGE
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